pennsylvania
OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
DARWIN LEUBA,	:	
Requester	:	
	:	
v.	:	**Docket No: AP 2026-2993**
	:	
WESTMORELAND COUNTY SHERIFF'S OFFICE,	:	
Respondent	:	

FACTUAL BACKGROUND

On May 26, 2026, Darwin Leuba ("Requester") submitted a request ("Request") to the Westmoreland County Sheriff's Office ("County") pursuant to the Right-to-Know Law ("RTKL"), 65 P.S. §§ 67.101 *et seq*., seeking:

> All available email metadata (limited to subject, sender address, all recipient addresses, including "to," "cc," and "bcc" fields, and date/time) for communications exchanged between any member of the Westmoreland County Sheriff's Office and any email address ending in @hsi.dhs.gov, @ice.dhs.gov, or @dhs.gov, during the period January 20, 2025 – May 26, 2026.

On July 2, 2026, following an extension during which to respond, 65 P.S. § 67.902(b), the County denied the Request on the grounds that the records are exempt from disclosure under Section 708(b)(1)(ii) of the RTKL as a record that "would be reasonably likely to result in a substantial and demonstrable risk of physical harm to or the personal security of an individual," under Section 708(b)(2) of the RTKL as "[a] record maintained by an agency in connection with

the military, homeland security, national defense, law enforcement or other public safety activity that, if disclosed, would be reasonably likely to jeopardize or threaten public safety or preparedness or public protection activity or a record that is designated classified by an appropriate Federal or State military authority," and under 708(b)(3) of the RTKL as "[a] record, the disclosure of which creates a reasonable likelihood of endangering the safety or the physical security of a building, public utility, resource, infrastructure, facility or information storage system." 65 P.S. § 67.708(b)(1)(ii); 65 P.S. § 67.708(b)(2); 65 P.S. § 67.708(b)(3). In addition, the County asserted that certain email addresses are confidential personal identification information under Section 708(b)(6)(i)(A) of the RTKL, and that certain records are exempt judicial records. 65 P.S. § 67.708(b)(6)(i)(A); 65 P.S. § 67.304; 65 P.S. § 67.503(b).

On July 22, 2026, the Requester appealed to the Office of Open Records ("OOR"), challenging the denial and stating grounds for disclosure. The OOR invited both parties to supplement the record and directed the County to notify the OOR if any third parties have a direct interest in this appeal. 65 P.S. § 67.1101(c).

On August 6, 2026, after receiving an extension, the County provided a position statement, reiterating its arguments. In support of its position, the County submitted attestations, made subject to 18 Pa.C.S. § 4904, of Sheriff James Albert ("Albert Attestation") and Open Records Officer Stephanie Paha ("Paha Attestation"). On August 6, 2026, the OOR granted the Requester's request for *in camera* review. On August 21, 2026, the County provided the responsive records for *in camera* review along with an *in camera* index. The records are identified as Bates Numbers 001-248. The records include the requested metadata with all other information from the emails redacted/omitted.

LEGAL ANALYSIS

The County is a local agency subject to the RTKL. 65 P.S. § 67.302. Records in the possession of a local agency are presumed to be public, unless exempt under the RTKL or other law or protected by a privilege, judicial order or decree. *See* 65 P.S. § 67.305. As an agency subject to the RTKL, the County is required to demonstrate, "by a preponderance of the evidence," that records are exempt from public access. 65 P.S. § 67.708(a)(1). Preponderance of the evidence has been defined as "such proof as leads the fact-finder . . . to find that the existence of a contested fact is more probable than its nonexistence." *Pa. State Troopers Ass'n v. Scolforo*, 18 A.3d 435, 439 (Pa. Commw. Ct. 2011) (quoting *Pa. Dep't of Transp. v. Agric. Lands Condemnation Approval Bd.*, 5 A.3d 821, 827 (Pa. Comms. Ct. 2010)).

One method an agency may use in meeting the burden of proof that a record is exempt is testimonial affidavits, which if "found to be relevant and credible may provide sufficient evidence in support of a claimed exemption." *McGowan v. Pa. Dep't of Env't Prot.*, 103 A.3d 374, 381 (Pa. Commw. Ct. 2014) (quoting *Heavens v. Pa. Dep't of Env't Prot.*, 65 A.3d 1069, 1073 (Pa. Commw. Ct. 2013)). Such "affidavits must be detailed, nonconclusory, and submitted in good faith." *Office of the Governor v. Scolforo*, 65 A.3d 1095, 1103 (Pa. Commw. Ct. 2013) (en banc) (citation omitted). Attestations and affidavits that are "conclusory or merely parrot [an] exemption do not suffice" to satisfy an agency's burden of proof. *Pa. Dep't of Educ. v. Bagwell*, 131 A.3d 638, 659 (Pa. Commw. Ct. 2016). "In other words, a generic determination or conclusory statement are not sufficient[.]" *Scolforo,* 65 A.3d at 1103.

1. The County failed to prove that the records contain the name or other identifying information relating to an individual performing an undercover or covert law enforcement activity

The County argues that the metadata contains the names and email addresses of individuals performing an undercover or covert law enforcement activity. Section 708(b)(6)(iii) of the RTKL states that "[a]n agency may redact the name or other identifying information relating to an individual performing an undercover or covert law enforcement activity from a record." 65 P.S. § 67.708(b)(6)(iii). However, in this instance, other than a statement by Albert that "[i]n my opinion, the disclosure of the information would… [c]ompromise active, confidential criminal investigations and disclose intelligence networks," there is no evidence to support this exemption. Albert Attestation, ¶ 9. Moreover, the Albert Attestation is generic and conclusory; therefore, it does not satisfy the County's burden of proof. *Scolforo,* 65 A.3d at 1103.

2. The County failed to prove that the records are exempt under the safety and security exemptions of the RTKL

The County argues that the records are exempt from disclosure under the personal security, public safety, and physical security exceptions set forth in Sections 708(b)(1)-(3) of the RTKL, 65 P.S. §§ 67.708(b)(1)-(3). In support, the County asserts that the Albert Attestation provides sufficient evidence that disclosure of the metadata would pose a substantial and demonstrable risk to personal security and would be "reasonably likely" to jeopardize public safety and endanger physical security. *See* County Position Statement, p. 3.

Section 708(b)(1)(ii) of the RTKL exempts from disclosure a record that "would be reasonably likely to result in a substantial and demonstrable risk of physical harm to or the personal security of an individual." 65 P.S. §67.708(b)(1)(ii). For this exemption to apply, an agency must show, by a preponderance of the evidence, "(1) a 'reasonable likelihood' of (2) a 'substantial and demonstrable risk' to a person's personal security." *Delaware County v. Schaefer ex rel. Philadelphia Inquirer*, 45 A.3d 1149, 1156 (Pa. Commw. Ct. 2012).

Section 708(b)(2) of the RTKL also exempts from disclosure records "maintained by an agency in connection with ... law enforcement or other public safety activity that, if disclosed, would be reasonably likely to jeopardize or threaten public safety or preparedness or public protection activity[.]" 65 P.S. §67.708(b)(2). In order to satisfy this exemption, an agency must show, by a preponderance of the evidence, that (1) the record at issue relates to a law enforcement or public safety activity; and (2) disclosure of the record would be "reasonably likely" to threaten public safety or a public protection activity. *Carey v. Dep't of Corr,* , 61 A.3d 367, 374-75 (Pa. Commw. Ct. 2013).

Finally, Section 708(b)(3) of the RTKL exempts from public access "[a] record, the disclosure of which creates a reasonable likelihood of endangering the safety or the physical security of a building, public utility, resource, infrastructure, facility or information storage system[.]" 65 P.S. § 67.708(b)(3). The public infrastructure exemption applies when "the disclosure of the records, rather than the records themselves, must create a reasonable likelihood of endangerment to the safety or physical security of certain structures or other entities, including infrastructures." *Smith ex rel. Smith Butz v. Pa. Dep't of Env't Prot.*, 161 A.3d 1049 (Pa. Commw. Ct. 2017).

To show a reasonable likelihood, "[a]n agency must offer more than speculation or conjecture to establish the security-related exceptions under the [RTKL]." *California Borough v. Rothey*, 185 A.3d 456, 468 (Pa. Commw. Ct. 2018). "The Commonwealth Court has "defined substantial and demonstrable [risk] as actual or real and apparent." *Borough of Pottstown v. Super-Aponte*, 202 A.3d 173, 180 (Pa. Commw. Ct. 2019 (quoting *Carey*, 61 A.3d at 373). The Commonwealth Court explained:

> This Court consistently holds that speculation and conclusory statements in an affidavit do not show a reasonable likelihood of a threat to security. *Lutz* [*v. City*

of Phila., 6 A.3d 669 (Pa. Commw. Ct. 2010)]. An affidavit that does nothing more than state that, based on the affiant's professional experience, the disclosure of the information "would create a substantial risk of physical harm" for the agency and the public is insufficient. We rejected such language in *Harrisburg Area Community College (HACC) v. Office of Open Records*, (Pa. Commw. Ct., No. 2110 C.D. 2009, 2011 Pa. Commw. Unpub. LEXIS 378, filed May 17, 2011) (unreported).

Carey, 61 A.3d at 376.

Here, Albert attests:

8. In my opinion, the disclosure of the information sought would result in a substantial and demonstrable risk of physical harm to or the personal security of members of the Westmoreland County Sheriff's Office and those agents with DHS/ICE; would be reasonably likely to jeopardize or threaten public safety or preparedness or a public protection activity create; and would create a reasonable likelihood of endangering the safety or the physical security of a building, public utility, resource, infrastructure, facility or information storage system.

9. In my opinion, the disclosure of the information would:

- Expose the officers to cyber-attacks, including phishing and malware campaigns;

- Compromise active, confidential criminal investigations and disclose intelligence networks;

- Subject law enforcement officers to online spam/harassment campaigns;

- Subject law enforcement email to "flooding" which would slow/compromise communication channels;

- Subject law enforcement to potential doxxing by linking professional identities to personal data online, potentially exposing home addresses and families of officers, which could place the officers and their families in immediate danger;

- Allow unauthorized individuals to contact and obtain personal information from Elected Officials, County Employees, and Federal Employees;

- Set a dangerous precedent that, in my judgment, would create a mechanism whereby requesters seeking to harm or harass Elected officials, County Employees and Federal Employees could gain secure information;

• Would endanger the safety or physical security of the Elected official and County employees and Federal Employees.

Based on the OOR's *in camera* review of the records it is not facially evident that the records are exempt, and the County offers no evidence beyond the Albert Attestation. The OOR concludes that the County failed to satisfy its burden of proving that the records are exempt from disclosure under the security-related exceptions under the RTKL because its evidence consisted of speculation. *See* 65 P.S. § 67.708(a)(1).

3. The records are not records of a judicial agency

The County claims that the records bearing Bates Numbers 006-008, 025-033, 040-095, 100-138, 148-150, 167-169, 180-185, 187-198, 200-208, and 214-215 are exempt records of a judicial agency because they contain email addresses of county and state judicial employees.

Section 304 of the RTKL provides that the only records available under the RTKL from judicial agencies are "financial records." 65 P.S. § 67.304. In *Court of Common Pleas of Lackawanna Cnty. v. Office of Open Records*, the Commonwealth Court found that emails of a judicial employee, even though they were in the possession of the county, were records of a judicial agency. 2 A.3d 810, 813 (Pa. Commw. Ct. 2010). However, the emails at issue in *Court of Common Pleas of Lackawanna Cnty*. were generated by personnel of a judicial agency. Here, the various judicial email addresses only appear in the "To" field, and the scope of the Request does not encompass the substance of the emails. As a result, the metadata at issue here do not qualify as records of a judicial agency.

4. Personal email addresses may be redacted

Lastly, the County asserts that "[t]he data requested by the Requester includes the email addresses of direct personal email addresses of individuals whose email addresses have not been

held out to the public. This includes the following personal email address domains: gmail, comcast, verizon, msn, and yahoo." Paha Attestation, ¶ 8.

Section 708(b)(6) of the RTKL exempts "personal e-mail addresses" from disclosure. 65 P.S. § 67.708(b)(6)(i)(A). The RTKL specifically provides that, where a record contains information which is subject to access along with information which is not subject to access and the two cannot be physically separated, the agency shall redact from the record the information which is not subject to access, and the response shall grant access to the information which is subject to access. 65 P.S. § 67.706; *Easton Area Sch. Dist. v. Miller*, 659 Pa. 606, 632 (2020). As the email metadata contains personal email addresses, the County may redact these personal email addresses when producing the records to the Requester. *See* Office of Lieutenant Governor v. Mohn, 67 A.3d 123, 133 (Pa. Commw. Ct. 2013) (holding that the Lieutenant Governor's individual e-mail address was exempt from disclosure even though it was used to conduct agency business where it was "personal" to him in carrying out his public responsibilities).[1]

CONCLUSION

For the foregoing reasons, the appeal is **granted in part** and **denied in part**, and the County is required to provide the email metadata to the Requester within thirty days, with personal email addresses redacted. This Final Determination is binding on all parties. Within thirty days of the mailing date of this Final Determination, any party may appeal or petition for review to the Westmoreland County Court of Common Pleas. 65 P.S. § 67.1302(a). All parties must be served with notice of the appeal. The OOR also shall be served notice and have an opportunity to respond according to court rules as per 65 P.S. § 67.1303, but as the quasi-judicial tribunal adjudicating this matter, the OOR is not a proper party to any appeal and should not be named as

[1] We note that a requester would have the ability to request emails related to agency business from those accounts under the RTKL, provided that they were not otherwise exempt from disclosure.

a party.[2] All documents or communications following the issuance of this Final Determination shall be sent to oor-postfd@pa.gov. This Final Determination shall be placed on the website at: http://openrecords.pa.gov.

FINAL DETERMINATION ISSUED AND MAILED: October 7, 2026

/s/ Josh Macel

_____

JOSH MACEL
APPEALS OFFICER

Sent *via* Appeal Portal to: Darwin Leuba; Stephanie Paha (AORO); Melissa Guiddy, Esq.

[2] *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).